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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Rulemaking on the Commission's Own Motion to
Review the Telecommunications Public Policy
Programs.

R. 06-05-028
(Filed May 25, 2006)

**OPENING COMMENTS OF
COX CALIFORNIA TELCOM LLC (U-5684-C)**

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A. INTRODUCTION

Cox California Telcom, LLC (U-5684-C) (hereinafter “Cox”) hereby submits its opening comments on the issues raised in this rulemaking on California’s telecommunications public policy programs. The Commission has taken the proper approach in looking at all of these programs together, and particularly with respect to its intent to review the funding for all of the programs in a consistent manner.

The Commission asks whether the programs are meeting their statutory purposes and requirements, and asks the parties to identify and explain changes that should be made. It may be that the programs (particularly the Lifeline program) have slipped somewhat from those goals today, especially in light of technological and competitive changes that have occurred over time. In that regard, some changes may be needed to bring them more into line with the current telecommunications environment. Cox will recommend certain changes below, including a change to the funding mechanism for all of the programs.¹

The Commission also needs to recognize the possibility that a portion of this rulemaking faces a potential overlap with R. 05-04-005, the Uniform Regulatory Framework (“URF”) proceeding. It is in that latter proceeding that the Commission is evaluating, among other issues, the proper definition of the term “basic service” in the modern environment. The definition of that term is important in ascertaining rights and obligations for participation in various of the public policy programs, but it could present a

¹ Although the rulemaking identifies a number of public policy programs, the questions about the CHCF-B program render its review status a bit ambiguous. As was noted in the OIR, the only issue in this proceeding regarding the CHCF-B program is its funding process. Cox’s comments on the “programmatic” issues for the CHCF-B program will be provided in its comments in R. 06-06-028.

problem to address that same question here, without the benefit of the evidentiary record established in the URF proceeding.

Cox is pleased to offer comments on the issues raised by the Commission. Cox's comments below address the following subjects:

- A general analysis of whether the public policy programs are meeting their statutory goals and requirements
- A discussion of jurisdictional issues related to the services covered by the public policy programs
- Comments on, and recommended modifications to, certain aspects of the public policy programs, including the following:
 - Establishment of a surcharge system based on assigned, working numbers as means of funding the public policy programs;
 - Consideration of the applicability of LifeLine discounts to bundled services;
 - Proper methods of calculating the LifeLine discount;
 - Issues related to ETC registration for LifeLine carriers; and
 - Determination of services eligible for the California Teleconnect Fund;
- Issues related to the possible expansion of the public policy programs to include wireless, broadband, and video services

Cox looks forward to the opportunity to provide concrete assistance to the Commission in the review presented here. Although Cox does not recommend here that the Commission hold any evidentiary hearings on these matters, it encourages a full discussion of the issues, possibly through Commission-sponsored workshops. Cox will participate in all aspects of this investigation as the circumstances require.

B. MAJOR ISSUES

1. General analysis of whether the public policy programs are meeting their statutory goals and requirements

The first question that must be addressed is whether or not the public policy programs under consideration are meeting their statutory goals and requirements. Cox will focus here on the LifeLine program, for that is the largest of the programs served by Cox.² The annual budget in California for the LifeLine program is approaching \$300 million, with a substantial amount of federal funding made available to assist low-income customers in the state. Since the LifeLine program is designed to provide basic telecommunications services to all Californians, it has a ubiquitous role in the public policy arena. An overall look at the public policy programs must begin with the LifeLine program itself.

When the LifeLine program was created (as the ULTS program), it had a simple, straightforward goal: make certain that low-cost basic exchange service was available to all Californians, so that cost could not be a barrier to receiving basic service, including emergency phone service. More than 20 years after the program was adopted, basic phone service is available, at a low cost, across the entire state. The ILECs, along with Cox and others, provide LifeLine service at a low rate, permitting all of their eligible customers to receive and maintain the most basic forms of telecommunications service.

Yet this rulemaking is properly looking at the question of whether changes in the telecommunications marketplace, from both a competitive and technological standpoint,

² Cox in no way diminishes the importance of the other programs – Payphones, Deaf and Disabled, and California Teleconnect – all of which play critical roles in serving their relative constituencies, but Cox’s focus is on Lifeline services. This focus is consistent with the relative size of the funds supporting each of the programs and Cox’s involvement with each.

have rendered the program out-of-date. The rulemaking talks about wireless and VoIP services, recognizing how those have become, or are becoming, a far more significant part of the telecommunications landscape. Cox is at the forefront of this telecommunications revolution, offering innovative stand-alone and bundled services to its customers, and it recognizes that the concept of “basic” service may have changed from the time the LifeLine program began until today.

When looking at programs like the LifeLine program, one has to consider whether eligible customers are still receiving the necessary services. Certainly to the extent that they can receive discounted wireline service, with access to 911 services, they are benefited in the manner that the program anticipated. Yet the Commission has to consider whether other types of service have moved closer to being in the category of “basic” services. The URF proceeding demonstrated the dramatic growth in the penetration rates of other services in California, and it is there that the Commission is looking at whether the definition of “basic” service should be modified.³ This rulemaking should proceed in tandem with that evaluation.

The Lifeline program, along with the other public policy programs, faces a changing environment. The Commission needs to take that environment into account as it considers whether and, if so, how to modify these programs going forward.

³ Of course, Cox reserves its right to address that issue in the URF proceeding, including in its upcoming comments on the recently released draft decision of Commissioner Chong.

2. The Commission should adopt a surcharge system based on assigned, working numbers

The Commission is right to be concerned about the methods of funding the various public policy programs. Funding has become a complicated and difficult issue, particularly given the number of surcharges imposed on customers' bills. Based upon these concerns, Cox would support the implementation of a surcharge system based on the assignment of working numbers, along the lines of that previously described by AT&T in this proceeding and in filings with the FCC. Such a methodology would have a number of substantial benefits.

First, the use of a number assignment system would be technology-neutral. All carriers must have numbers assigned to them, and the use of a surcharge based on assigned numbers would result in equal treatment for carriers of different types. The Commission has identified technology neutrality as a key goal of the funding mechanisms. By basing the surcharge on the assignment of numbers, the Commission would be able to meet this goal in a fairly simple manner.

Moreover, the system would be more stable and would be much easier to manage. Calculation of a surcharge based upon assigned, working numbers could be accomplished in a straightforward manner. The Commission would not need to undertake any complicated calculation analysis, nor would it need to calculate varying surcharges for each of the public policy programs. Instead, the Commission would simply determine the amount needed to fund the various programs, and then would apply a single surcharge across the entire base of assigned, working numbers in an amount necessary to meet the needs of all the programs.

Quite significantly, such a surcharge system would be much less confusing to consumers. Today, customers of telecommunications companies face a complicated list of surcharges on their monthly bills, with different percentages applied to each program. By replacing this with a system that merely calculated a single surcharge for each assigned, working number, consumers would receive a simplified bill showing them the exact, single amount of the surcharge that they incur each month to fund all of these public policy programs.

Cox recommends that the Commission adopt the use of this type of surcharge based on assigned, working numbers. The details of such a surcharge should be established through workshops and comments in this proceeding. One aspect to address there would be the method of calculating the amount of the surcharge, in part by taking into account the trend in net assigned number growth in California.

3. The need to address other issues associated with the Lifeline program

It is critical that the Commission modernizes and maintains the viability of the Lifeline program. In this rulemaking, the Commission has the opportunity to address a number of issues related to that treatment. One key aspect, for example, is the need to address “bundled” services in connection with the purchase of Lifeline services. Another is the method by which the LifeLine discount is calculated. Finally, there is a continued need for the reimbursement of operating costs.

Each of these aspects of the LifeLine program is discussed below.

- **Applicability of LifeLine discounts to bundled services**

It is important that LifeLine customers be treated in a fair and equal manner with respect to the availability of specific services. In particular, Lifeline customers should be able to buy bundles that include basic service at the discounted LifeLine rate. It would not be equitable if Lifeline customers were unable to take advantage of the availability of bundled services simply because they were purchasing discounted Lifeline services at the same time.

The bundling of services offers a tremendous advantage to California telecommunications customers and the ability to purchase bundles should not be limited based on income levels. However, in order for this to work fairly, bundles must include all functions of basic service to be eligible for the LifeLine discount. This means that a LifeLine customer should be able to purchase basic service at the discounted LifeLine rate, while still enjoying the favorable pricing of the bundle, which includes other services that come with that basic service. For example, if the Lifeline discount were to be \$5.00 and if the bundle price were to be \$100.00, then a Lifeline customer could purchase the bundle for \$95.00. If the bundle does not include all of the functions of basic service, the LifeLine discount would not apply.

The mere offering of a LifeLine discount for basic service included with a bundle of other services does not necessarily imply that the LifeLine program is subsidizing those other services. Since eligible customers could always purchase the standalone basic service with the Lifeline discount, that particular aspect of the bundled service is not being changed. What is being changed is allowing customers, and service providers, to take advantage of the many benefits that bundling of services provide, regardless of the

customers' income levels. This is a simple manner of expanding the Lifeline program to meet changes in the communications marketplace.

- **Calculation of the LifeLine discount**

Calculation of the LifeLine discount amount is an important matter related to the Commission's review of the LifeLine program. It is appropriate, in this regard, to consider the effect of potential detariffing under the Commission's URF proceeding. If the Commission moves ahead with some level of detariffing of basic services, there may well no longer be a tariff benchmark available for the calculation of the discount.

To the extent that such a step would not jeopardize customers' ability to receive the maximum federal Lifeline support, one possible means of addressing such a change would be to set a flat discount rate, perhaps \$5.00 plus the current EUCL amount charged by the incumbent LEC in that service area, that will be applicable to all LifeLine customers. By setting a flat discount amount, the Commission would be able to eliminate the reliance on tariffed rates and at the same time would be able to cap the program subsidy amount. The total subsidy would be determined based upon the discount amount multiplied by the number of total customers.

Moreover, the Commission could maintain control over the total subsidy amount through periodic reviews. The flat rate could be reviewed periodically to determine whether it remains adequate to meet the needs of the Lifeline program and the customers that it serves.

In calculating the LifeLine discount, the Commission should continue to limit the availability of the discount to one primary line per household. This is an appropriate

limitation on the availability of LifeLine discounted service, and there is no need to modify it even if the discount is calculated based on a flat-rated amount.

- **The continued need for reimbursement of operating costs**

Finally with respect to the LifeLine program, reimbursement for operating costs should continue as a part of the program. Carriers should be able to recover, as part of their reimbursement for serving Lifeline customers, the reasonable expenses they incur in operating the program. Continuation of this reimbursement policy will allow carriers to continue to maintain their participation in the program in a cost-effective manner.

4. What services should be covered by the California Teleconnect Fund?

The CTF serves an extremely important role in offering low-priced services to schools, libraries, hospitals and community-based organizations. The use of the CTF to provide them with discounted services meets an important public policy purpose.

However, it would be entirely unfair to determine the applicability of this fund based on a company's status as a certificated carrier. For example, such an approach would wrongly favor DSL services over cable modem and wireless Internet technologies, since it is only the former services that are offered by certificated carriers in California. The Commission's goal of advancing telecommunications in a technology-neutral manner would be harmed if the eligibility of services for this fund were biased in favor of one type of service.

The Commission should recognize that DSL services have been classified as “information services.”⁴ As such, they should not be eligible to recover subsidies from the CTF unless all providers of comparable information services, including cable broadband Internet and wireless Internet services, are similarly eligible to participate in the CTF. In fact, the federal Schools and Libraries (or E-Rate) and Rural Health Care Programs currently operate in this manner by allowing non-telecommunications providers of services classified as Internet Access to be eligible to participate in the programs. It would present a significant competitive disadvantage to cable broadband and wireless Internet providers if only the DSL services offered by the ILECs were to obtain this form of subsidy.

As with other services, the Commission could make clear that such participation is voluntary and that participation by an otherwise unregulated provider would not thereby make that provider subject to the Commission’s jurisdiction, except to the extent necessary to administer the program.

⁴ Although the relevant statute, Public Utilities Code § 884.5, refers to DSL services, it was enacted at the time that these services were classified as “telecommunications” services. The change in classification for DSL requires that the Commission confront the issue of inequitable treatment in considering all of these services.

5. Expansion of public policy programs to wireless, broadband and video services: an open question

Finally, and related to the last item discussed, the Commission has to consider whether or not generally to expand the applicability of the public policy programs to wireless, broadband and video services.

Cox does not believe that such an expansion is appropriate in connection with the review of California's public policy programs in this rulemaking proceeding. In essence, this question presents an issue of what is meant by the term "basic service." As noted above, the Commission is reviewing the definition of basic service in its URF proceeding. If and when the Commission decides to modify the definition of basic service to include services of this type, it would be appropriate at that point to address the expansion of the public policy programs to cover such services as well.

Thus, this rulemaking proceeding is not a proper forum for such an evaluation.

C. CONCLUSION

The Commission's review of California's public policy programs comes at a good time. Technology is moving forward and there is a need to align these programs with the current state of the communications marketplace. Jurisdictional and funding issues must be addressed, and Cox has set forth above specific recommendations on each. It urges the Commission to move these issues forward in congruence with the analysis of "basic services" underway in R. 05-04-005 and with the programmatic review of the CHCF-B underway in R. 06-06-028.

Dated: July 28, 2006

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J.S. Faber", with a stylized flourish at the end.

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CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties for which an electronic mail address has been provided, this day served a true copy of the original attached **OPENING COMMENTS OF COX CALIFORNIA TELCOM, LLC (U-5684-C)** on all parties of record in this proceeding or their attorneys of record.

Dated: July 28, 2006 at Lafayette, California.



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